IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9150 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMABHAI KARSANBHAI

Versus

ANUPAM INDUSTRIES

Appearance:

1. Special Civil Application No. 9150 of 1993

MR B.A.VAISHNAV with MR KV GADHIA for Petitioner No. 1

MR MJ THAKORE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 27/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. B.A.Vaishnav with learned advocate Mr. K.V.Gadhia for the petitioner and learned advocate Mr. M.J.Thakore appearing on behalf of

the respondent.

2. In the present petition, the petitioner has challenged the award passed by the Labour Court in reference No. 715 of 1981 dated 18.5.1992 wherein reference has been rejected by the Labour Court.

3. Rule has been issued by this Court on 19.10.1994. Learned advocate Mr. B.A.Vaishnav appearing on behalf of the petitioner has submitted that Labour Court has committed gross error in rejecting the reference filed by the workman. Mr. Vaishnav has submitted that Labour Court has committed error in holding that workman was failed to prove oral termination order dated 18.12.1980 and order which has been challenged by the workman is not in existence. According to him, it is the duty of the Labour Court to accept the order of termination and to consider the question of victimization and unfair labour practice. These are the facts not properly examined by the Labour Court and, therefore, according to him Labour Court has committed gross error in rejecting the reference.

4. Learned advocate Mr. M.J.Thakore appearing on behalf of the respondent has submitted that the Labour Court has rightly passed the award rejecting the reference and this being the finding of fact given by the Labour Court, this Court cannot reappreciate the same and come to a different conclusion while exercising powers under Article 227 of the Constitution of India. According to him there is no substance in the present petition and the same may be dismissed.

5. I have perused the entire award passed by the Labour Court. The Labour Court has given his finding in paragraph 8 and come to the conclusion that the order dated 18.12.1980, being oral termination, has been passed by the employer or not, that question is required to be examined by the Labour Court because that order was under challenge. Therefore, Labour Court has raised the question whether the services of the workman has been orally terminated on 18.12.1980 or not and, the question that the order of termination is legal and valid or not and, whether the workman is entitled any relief or not. The Labour Court has come to the conclusion that according to the statement of claim filed by the workman, the date of termination is 18.12.1980 and before this no procedure has been followed by the employer and because he was the member of the Union, the oral order of termination was passed by the employer because of victimization. In support of the said contention, the

workman was examined vide Exhibit-10. The second contention has been raised by the representative of the workman that even Section 25(f) has also not been followed by the employer. Against that the case of the respondent was that the service of the workman was terminated. Because of misconduct, after completion of departmental inquiry all the legal procedure has been followed by the respondent and whatever legal dues available to the workman, same has been sent by the respondent to the workman. This aspect has been examined by the Labour Court and ultimately Labour Court has come to the conclusion that the challenge made by the workman that termination order dated 18.12.1980 is wrong, actually services of the petitioner was not terminated on 18.12.1980. For that Labour Court has considered after relying on the inquiry papers produced by the respondent. Workman had admitted that he received the notice and he has also gave answer against the said notice. The inquiry papers were produced by the respondent vide Exhibits 15 to 22 wherein on each document there is a signature of the workman and vide Exhibit-23, on 28.10.1980 the inquiry officer's proceedings from page 1 to 13 has been received by the workman. Vide Exhibit-24, the second show-cause notice was also received by the workman and his signature was also there. Vide Exhibit-26, order dated 19.11.1980 being a discharge order passed by the respondent and whatever due amount available to the petitioner workman same is required to be collected from the office of the respondent. Therefore, Labour Court has come to the conclusion that looking to the departmental inquiry, after completion of the departmental inquiry, the respondent has passed an order on 19.11.1980 which was received by the workman, even though, that order was not challenged by the workman. On the contrary, incorrect statement was made by the workman that his service was orally terminated on 18.12.1980, therefore, Labour Court has come to the conclusion that once the oral termination order dated 18.12.1980 is not in existence and written order of discharge of the petitioner dated 19.11.1980 is not under challenge, therefore, there is no necessity to adjudicate the question and workman has not proved that his service was orally terminated on 18.12.1980. In light of these facts, ultimately the Labour Court has come to the conclusion that the order which is under challenge in the referred proceeding is not in existence at all and order which is in existence has not been challenged by the petitioner before Labour Court in pending reference. Therefore, ultimately, the Labour Court has rejected the reference on this ground. The termination which has been allowed by the workman is not in existence, on the

contrary the petitioner has been discharged by the respondent by written order after completion of inquiry on 19.11.1980. Therefore, according to my opinion, the Labour court has rightly dealt with the matter relying upon the oral and documentary evidence produced by the respective parties. The conclusion is correct to the extent that there is no oral termination on 18.12.1980 by the employer, on the contrary, the discharge order has been passed by the employer on 19.11.1980 which was not under challenge. In view of this, according to my opinion Labour Court has not committed any error while passing such award. After all, these are the oral evidence read in before the Labour Court and this court cannot act as an appellate authority, even this Court cannot reappreciate the same evidence which has been appreciated by the Labour court while exercising the powers under Article 227 of the Constitution of India. There is no procedural irregularity committed by the Labour Court and findings given by the Labour Court are not baseless or perverse and therefore, according to my opinion, there is no substance in the petition, present petition is therefore dismissed with no order as to costs. Rule is discharged.

(H.K.Rathod,J)

Jayanti*